

REMARKS

I. Amendments to the Specification and Claims

The Examiner objected to the specification because the Brief Description of Figures does not refer to Figures 2A, Figures 2B, Figures 3A and Figures 3B. This typographical error is corrected by the foregoing amendment, and this amendment does not add new matter to the specification.

The Examiner also objected to claims 3-5 because these claims are directed to nonelected subject matter. Claim 3 has been amended to recite a polypeptide encoded by the nucleic acid sequence of SEQ ID NO: 1, which encodes the amino acid sequence of SEQ ID NO: 7. Therefore, amended claim 3 is now directed to only elected subject matter. Claim 4 is directed to a polypeptide comprising an amino acid sequence of SEQ ID NO: 7, the other sequences recited in the claim were deleted by the previous amendment. Therefore, claim 4 as presented is directed to the elected invention. Claim 5 has been amended to depend from “claims 3 and 4” rather than “claims 4 and 5.” These amendments do not add new matter to the claims.

In view of the foregoing amendments, the objections to the specification and claims should be withdrawn.

II. Rejection Under 35 U.S.C. § 112, Second Paragraph Should be Withdrawn

Claims 3-5 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner alleged that the term “fragment thereof” recited in claim 3 is vague and indefinite.

In view of the foregoing amendment, the claims are not directed to fragments of the amino acid sequence of SEQ ID NO: 7. Therefore, the rejection under 35 U.S.C. § 112, second paragraph is now moot. Applicants request that the rejection under 35 U.S.C. § 112, first paragraph be withdrawn.

III. Rejection Under 35 U.S.C. § 103 Should be Withdrawn

Claims 3-5 were rejected under 35 U.S.C. § 103 as being unpatentable over Fleischmann *et al.* *Science* 269: 496-512, 1995 and UnitProt Database Accession No. P45285

in view of Wood (*Guide to Molecular Cloning Techniques* Vol. 152, 1987). Fleischmann *et al.* teaches the complete genome of *H. influenzae* Rd and provides an amino acid sequence that is 98.6% identical to SEQ ID NO: 7. According to the Examiner, Fleischmann *et al.* does not actually teach an isolated polypeptide or fragment of SEQ ID NO: 7. However, Wood allegedly teaches techniques for cloning using long oligonucleotide probes. The Examiner also asserts that the prior art provides methods for obtaining DNA which encodes a known protein sequence and it would have been obvious to use these methods to obtain the DNA for the protein disclosed by Fleischmann *et al.*

In view of the foregoing amendment, the claims do not recite fragments of SEQ ID NO: 7. Therefore, as Fleischmann *et al.* does not teach a sequence that is 100% identical or that rendering obvious SEQ ID NO: 7, the amended claims are not obvious in view of the cited art. Applicants request that the rejection under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, pending claims 3-5 are in condition for allowance and early notice thereof is requested.

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